IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.10.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.28891 OF 2007

AND

M.P.NO.3 OF 2007

1.D.Rathinavel Pandian
2.M.Annakodi
3.S.Arunpandian
4.S.Manokaran
5.S.Sivaji
6.S.Amaranathan
7.S.Muthuraman
8.V.Vetriselvan
9.M.Ramanikanthan
10.R.Pon Swamynathan
11.S.Ajith
12.A.Raja
13.S.Jawahar
14.A.Pulivaganan
15.S.Kasiviswanathan
16.A.Venmani
17.S.Jeganathan
18.M.Ganesan
19.A.Ramesh
20.U.Jayachandran
21.R.Murugan
22.Pazhanikumar
23.N.Chandrasekaran
24.M.Thirugnanasambandar ...Petitioners

Vs.

1.State of Tamil Nadu
rep. by Secretary to Government
Thamizh Development and Culture and
Hindu Religious and Charitable Endowments
Fort St.George,
Chennai 600 009.

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2. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam,
Chennai 600 034.

3. Thamizh Naadu Public Service Commissioner
rep. by its Secretary,
Oomanthoorar Government Estate,
Anna Saalai,
Chennai 600 002. ...Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the respondents touching the Notification/Advertisement No.122, of the third respondent, published in Dinamani on 01.08.2007 and quash the same and direct them to re-notify by permitting the serving Executive Officers having B.L.Degree and five years experience as Executive Officers and without any age stipulation as stated within.

For Petitioners: Mr.A.E.Chelliah
Senior Counsel
for Mr.K.Ramanajam
For Respondents 1 & 2: Mr.T.Chandrasekaran
Special Government Pleader (HR & CE)
For Respondent No.4: Mr.A.Arul(TNPSC)

O R D E R

Invoking the writ jurisdiction of this Court, the petitioners who are serving as Executive officers at different temples attached to the Hindu Religious and Charitable Endowments Department (hereinafter referred to as HR & CE) State of Chennai, have brought forth this writ petition seeking to issue a writ of Certiorified Mandamus to quash the Notification/Advertisement No.122 of the third respondent , Public Service Commission, Tamil Nadu, made On 1.8.2007, and also to issue a direction to the respondent to re-notify by permitting the petitioners who are serving as Executive officers and having B.L. Degree and five years experience as Executive Officers and without any age stipulation.

2. Affidavit filed in support of the writ petition along with the grounds and the counter affidavits filed by the respondents are looked into.

3. The Court heard the learned counsel on either side.

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4. The following facts would emerge as facts admitted. The petitioners are Law graduates working as Executive Officers in the Temples under the HR & CE Department. For the appointment of Assistant Commissioner by direct recruitment, persons who are actually practicing in the Bar for a period of not less than three years in the Court of Civil or Criminal side, are allowed. The petitioners have joined as Executive officers Grade-II and have been serving so in the past. For the appointment of Assistant Commissioners, the Department has been following the procedure viz., 30% by way of promotion from the Executive officers, 30% of the Ministerial staff and 40% through direct recruitment. While doing so, the law graduates who are actually practicing in the bar in civil or criminal side, are allowed to participate in the said examination for the direct Recruitment of Assistant Commissioners. Pursuant to the request made, for the appointment of Assistant Commissioners for direct recruitment, a notification was made by the third respondent, the Tamil Nadu Public Service Commission, on 1.8.2007. The petitioners have challenged the said notification in the above writ petition.

5. Advancing his arguments on behalf of the petitioners, learned Senior Counsel would submit that the notification issued by the third respondent for the purpose of direct appointment as Assistant Commissioner to the HR & CE Department, is as bad as it could be. The petitioners are serving as Executive Officers in different temples for more than a decade and they have thus acquired sufficient experience not only in the administration of the temple and Religious Institutions attached to the Department, but also they have conducted number of cases on behalf of the Department in different Courts. Out of the persons who are appointed as Assistant Commissioners, 30% is originally allotted to Executive Officers who are serving in the Department and the remainder 30% is allotted to the Ministerial staff and rest the 40% has to be made by direct recruitment. While doing so, the Department has called for applications from the persons who have not only passed the law decree, but also been practicing as lawyers for a period of not less than three years in a Court of Civil or Criminal side. This has greatly affected the petitioners who have been serving in the Department and this should be relaxed permitting the petitioners to participate in the process towards the direct recruitment. Learned Senior Counsel would further submit that the petitioners have rendered their valuable service to the Department not only in the administration of the temple, but also in advancing the cases of the temple and defending the litigations filed against the temple in the past. There is no reason or rationale behind as could be seen that for the direct recruitment for the post of Assistant Commissioners, only the lawyers who have practiced not less than for three years, could be allowed. When the notification is looked into, the age limit is fixed as 21 years, which would be indicative of the fact that while fixing the age, there was no application of mind since completing the decree in

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law is possible at the age of 21 or 22 and as regards the experience in the Court of Civil or Criminal law for not less than three years, one would attain it at the age of 24 or 25 and calling applications from the persons who are practicing as lawyers for a period of not less than three years at the age of 21, is nothing but non-application of mind and when the syllabus for the examination of Grade-I Executive officer is looked into, the same is exactly the one that are given to applicants who are coming under direct recruitment, and in so far as experience is concerned, the petitioners who have been serving as Executive Officers for more than a decade could have certainly acquired more and better experience than the law graduates though they have got a practice in the Court of civil law or criminal side. It is further to be added that the syllabus does not contain the criminal subject; but, the applications were called for from the lawyers having three years' practice in civil or criminal side . Learned Senior counsel would further add that there are certain provisions in other departments for the people serving in the same Department to compete in Direct recruitment. But, in the instant case, the respondents have not afforded opportunity to the personnel like the petitioners to serve which is clearly indicative of the fact that it is unjust, unfair and arbitrary. Even in Madras State Judicial Service, the Judicial Officers are permitted to participate and compete in the examination conducted for the higher Court while they are serving in the Judicial Division. Learned Senior counsel would further add that the issue involved and the relief sought for by the petitioners are the same and identical and further a reading of the counter filed by the HR & CE Department, would clearly be indicative of the fact that even 40% which was made available for direct recruitment of the Assistant Commissioner at one point of time, was part of the same viz. 20% that was allotted to the Executive Officers like the petitioners. But the rule which was subsequently withdrawn would be indicative of the fact that the department itself was of the considered opinion that Executive officers can also be allowed to participate in the examination for direct recruitment. Why and under what circumstances it was dropped remained unknown and hence the notification issued by the third respondent, the Public Service Commission, pursuant to the request of the department, is bad and unjust and is violative of the provisions of Constitution and hence it has got to be quashed. Apart from that, a direction has got to be issued to the respondents to re-notify whereby the petitioners who are Executive officers having B.L. degree and five years experience,should be allowed to participate in the examination of the direct recruitment of the Assistant Commissioner of the Department.

6. Contrary to the above, learned counsel for the respondents 1 and 2 would submit that requisite qualification for the appointment of a candidate to the post of Assistant Commissioner by direct recruitment is that he must possess law decree besides a decree and also should be a practicing advocate in a Court of civil

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or criminal law for a period of not less than three years. For the purpose of appointment of Assistant Commissioners by direct recruitment, the impugned notification was issued. The contention put forth by the petitioners' side that the notification has taken away a chance of their becoming Assistant Commissioner is unsound for the simple reason that direct recruitment would in no way take away the entitlement of their right to become Assistant Commissioner by the course of their promotion. Under the said rule, Executive officer Grade I working in the Department, could be appointed by transfer to the post of Assistant Commissioner. For the post of Assistant Commissioner, 30% is allotted to the executive officers serving in the department by way of promotion, and 30% is allotted to the Ministerial staff and the remaining viz. 40% is by way of direct recruitment. It is true that representations were given by the Executive officers for relaxing the rules and they are kept pending for consideration. It is true that for the purpose of direct recruitment of the Assistant Commissioners, the candidate should not only be a law graduate, but also have a practice in civil or criminal law for a period of not less than three years. It was stipulated with a view that the candidates having sufficient experience in the filed of law and procedure , should be appointed. The petitioner though they have been working as Executive officers, cannot claim that they have gained knowledge or experience as practicing lawyer in Courts.

7. The contention put forth by the petitioners' side that the persons who are in the lower grade, are allowed to compete for examination at the time of direct recruitment along with others cannot be made applicable to all the Departments. While doing so, the nature of work, staff pattern and feeder category have got to be taken into account. Since it would differ from department to department, all cannot be treated alike. As far as the petitioners are concerned, on promotion they can get the post of Assistant Commissioner, in due course according to their seniority and that too, since 40% is allotted to them, they cannot find fault with the notification made to the effect that a practicing lawyer in a civil or criminal court with three years experience for the post of Assistant Commissioner alone could participate and compete in the examination and it cannot be stated that the notification is bad in any way. Learned counsel for the respondent would further add that since the notification has been issued by the third respondent, pursuant to the rules which was in practice from 1968 onwards, without challenging the rules, the writ petition is not maintainable. Even G.O.Ms.No.1498, Revenue Department dated 27.7.1968 reads that for the direct recruitment, not only the basic graduation is a must, but also the candidate must be actually practicing as an advocate or pleader in the civil or criminal side for a period not less than three years and so long as the rules is in force for more than three decades, even without challenging the rules, now the petitioners challenged the notification by way of writ petition which cannot be maintained.

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8. Learned counsel for the third respondent would submit that the impugned notification has been issued for the purpose of direct recruitment of Assistant Commissioners to HR & CE department and this notification is based on the rules which has been in force and practiced from 1968 and so long as the rules are continued to be in force, the petitioners cannot challenge the notification which is based on the said Rule and hence, the writ petition has got to be dismissed.

9. The Court paid its anxious consideration on the submissions made.

10. As could be seen above, the grievance of the petitioners who are serving in the HR & CE Department, Tamil Nadu as Executive Officer in different places is that despite their experience, they were not allowed to participate in the examination conducted for the purpose of direct recruitment of the Assistant Commissioner to the Department. According to the petitioners, they have acquired rich experience not only in the temple administration, but also by conducting cases before the Courts. Learned Senior Counsel for the petitioners also brought to the notice of the Court that in different departments, the officials working in the lower category, while in service are permitted to compete for higher post. According to the learned Senior Counsel, there is no rationale or reason to deter or to prevent or to disallow the Executive Officers having rich experience in the field, to participate in the examination for the Assistant Commissioner post. The reply given by the department, is that so far as the appointment of the Assistant Commissioners are concerned, 30% is already allotted to the Executive Officers who are in service; but, they can get by way of promotion, 30% to the Ministerial staff and thus, the remainder 40% is open for direct recruitment and thus the petitioners though served as executive officers, cannot have grievance that they are likely to lose their promotion. It is also contended by the learned counsel for the respondent-department that for direct recruitment for the post of Assistant Commissioner, one should not only have a basic graduation, but also be a law graduate and also actually practicing as an advocate or pleader in the Court of Civil or Criminal law for a period of not less than 3 years.

11. After careful consideration of the submissions made, this Court is of the considered opinion that notification now challenged has got to be quashed for more reasons than one. A reading of the notification does not indicate under which rule it is issued. The Department wants to rely on G.O.Ms.No.1498 Revenue dated 27.7.1968 wherein it is stipulated that for the direct recruitment, the qualifications were prescribed as stated above. But it is highly doubtful whether the rule relied on by the department, was followed in the past. Though it is claimed by the department that 40% of the

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vacancies were earmarked for direct recruitment, pursuant to the above G.O., that too from the year 1968, a reading of the counter would reveal that 20% out of 40% in the direct recruitment was allotted to the law graduates for both ministerial staff and the subordinate staff viz. Executive Officers in the department for a period of a decade from 1994 which could have been only with an intention to provide promotional opportunities in the past. A query was made by the Court as to when this allotment of 20% out of 40% was given to ministerial staff and the Executive Officers in the department. Learned counsel for the Department would submit that it was pursuant to the G.O. of the year 1994, and the same was subsequently withdrawn in the year 2003. From the submission made by the learned counsel, it would be quite clear that though originally 40% was earmarked for direct recruitment from 1968, from 1994 to 2003 for a period of nine years, that was not followed. 20% was allotted to the ministerial staff and Executive Officers for the interregnum period and thus it would be quite clear that during the said period of nine years, only 20% was made by way of direct recruitment and the rule which is now relied on by the department of the year 1968 and referred to above was given a go-bye. It is further pertinent to point out that under what circumstances such a procedure was taken away i.e. 20% from 40% and whether it was again modified or amended or cancelled remained unknown. This Court is at a loss to understand how such a change was made. Now at this juncture, this Court is able to see sufficient force in the contention put forth by the learned Senior counsel for the petitioners. The department itself thought it fit to allot 20% out of 40% of the Executive Officers and Ministerial staff for appointing them as Assistant Commissioners.

12. Nextly, as far as the question of experience is concerned, this Court is at a loss to understand that the executive officers who have been in service for more than a decade will not have experience in the field. Now, the contention put forth by the Department that a person to be appointed by way of direct recruitment should not only possess a law decree, but also must be actually practicing as an Advocate or as a Pleader in a Court of Civil or Criminal side for a period of not less than three years. In the instant case, all the Executive Officers who seek to compete in the examination, are not only law graduates, but also having experience in the field of administration of the temple and they have participated in so many proceedings for and against the temple during the said period. Merely because a person is practicing as an advocate for a period of three years either in civil or criminal law, it cannot be stated that his experience would become more than what the Officers in the administration of the temple are having. Now it is not the case of the petitioners that they should be given higher percentage in the promotion as Assistant Commissioners; but, what are all requested by them is to allow them to participate in the examination for the appointment of Assistant Commissioner. On examination, if they are

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found to be fit, they can be selected and appointed and if they are not fit, they can be rejected. Further as rightly pointed out by the learned Senior Counsel for the petitioners, in the Judicial Department, an individual who is serving in the Department in the junior division, can be allowed to compete for the higher post and since he is fit to compete, there cannot be any impediment for his appointment. If the petitioners who are executive officers serving for more than a decade, at the time of examination, are found fit to compete, there cannot be any impediment for appointing them as Assistant Commissioners.

13. As regards the Notification now challenged, all types of criticisms can be leveled against the same. At the outset, it has got to be pointed out that if a person is to participate in the examination for the post of Assistant Commissioner, the minimum age prescribed, is 21 years. A person who gets a degree in law, he would be not less than 22. If to be so, one could acquire the said qualification only at the age of 24 or 25 years. Hence, fixing minimum age as 21 years is not consistent to reality or having any basis. Further, the notification says that the person must be a lawyer practicing in civil or criminal law for a period of three years; but the syllabus does not contain any subject in criminal law. As stated above, the notification does not speak about any rule, pursuant to which ,the notification is issued. In the instant case, for the reasons stated above, this Court is of the considered opinion that the notification can be declared as bad.

14. Further in the instant case, though the petitioners have not directly challenged the rules of the year 1968, but at the same time, it is pertinent to point out that the notification itself is highly unjust, since the department has not followed the above referred G.O. for a period of 9 years; but, again how it was brought into force remained unknown. Under such circumstances, it would be fit and proper to issue a direction to the first respondent State to take into consideration all the observations made above, and to amend the rules in such a way that the Executive officers having experience of not less than six years, can also participate in the examination for the post of Assistant Commissioners by direct recruitment. Hence, the notification now challenged, has got to be necessarily quashed, and accordingly, it is quashed and a direction is issued. Consequently,the HR & CE department is also directed to act as per the new guidelines to be framed by the Government in this regard.

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15.With the above observation, the writ petition is ordered accordingly. No costs. Consequently, M.P.No.3 of 2007 is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

VJY

To

1.The Secretary to Government
Thamizh Development and Culture and
Hindu Religious and Charitable Endowments
Fort St.George,
Chennai 600 009.

2. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam,
Chennai 600 034.

3. The Secretary,
Thamizh Naadu Public
Service Commissioner
Oomanthoorar Government Estate,
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